fendant as to the other. Section 129 of the Federal Judicial Code provides that appeals from interlocutory decrees must be taken within thirty days. The plaintiff appeals from the part of the decree adverse to him more than thirty days after its entry. *Held*, that the decree was interlocutory and the appeal is barred. *Stromberg Motor Co.* v. *Arnson*, 56 N. Y. L. J. 1599 (Circ. Ct. of App., 2nd Circ.).

When the judgments in an action are absolutely unconnected, there may be partial appeals. *Hall* v. *Bank of Virginia*, 14 W. Va. 584, 614. So the appeal, in the principal case, can only be barred if the decree appealed from is considered interlocutory. An interlocutory decree has been defined as "an adjudication or order, made upon some point arising during the progress of a cause, which does not determine finally the merits of the question or questions involved." See 1 BOUVIER, LAW DICTIONARY, 3 rev., 805. The question of what constitutes an interlocutory decree is especially difficult when various issues are raised in the same suit. It has been held that a decree which decides the merits is final, even though an accounting not asked for in the pleadings and merely incidental to the relief is still necessary. *Forgay* v. *Conrad*, 6 How. (U. S.) 201. So a decree which dismisses the action as to some parties, so that they have no further interest in the action, but retains the case as to other parties, is so far final as to allow a separate appeal. *Hill* v. *Chicago & Evanston R. Co.*, 140 U. S. 52. However the weight of authority is in accord with the principal case, that a decree dismissing some claims in an action and giving relief by an accounting as to others, but dismissing none of the original parties, is entirely interlocutory. *Western Electric Co.* v. *Williams-Abbott Electric Co.*, 108 Fed. 952; *Ex parte National Enameling Co.*, 201 U. S. 156. *Contra*, *Historical Pub. Co.* v. *Jones*, 231 Fed. 784. Under the previous federal statute which allowed appeals from interlocutory decrees only when an injunction was granted or continued, a decree denying an injunction was treated as final, in order that there need not be a separate accounting, if it was reversed. *Scriven* v. *North*, 134 Fed. 366. The present statute removes the necessity for such construction by allowing an appeal from an interlocutory decree if taken in time. But when the period for appeals is as short as in the Judicial Code, this uncertainty as to what constitutes an interlocutory decree is a cause of great hardship; and it seems that the term should be more accurately defined by statute, or that the courts should be given power to allow appeals, in their discretion, after the time has expired.

PRESUMPTIONS — PRESUMPTION OF DEATH FROM SEVEN YEARS' ABSENCE WITHOUT NEWS — SUBSTITUTION OF ACTUARIAL TABLE. — William died in 1915. Thomas, his brother, disappeared in 1872 at the age of thirty, and has not been heard from since 1894. Thomas' children apply for administration of his estate. If Thomas predeceased William, the petitioners will share *per capita* in William's estate as nephews and nieces; if Thomas survived William, they will take *per stirpes* from Thomas' share. *Held*, that from mortality tables confirmed by family longevity Thomas both survived William and is now dead, and that administration be granted. *The Goods of Thomas Rowe*, 56 N. Y. L. J. 1669 (Surrogates' Ct.).

The presumption of death after seven years' absence from home without news is nothing more than the cessation of the presumption of continued life at the seventh year. See THAYER, PRELIMINARY TREATISE ON EVIDENCE, 323. It is based on two elements. First, the natural mortality of man in the lapse of time. *Cf. Martinez* v. *Succession of Vives*, 32 La. Ann. 305, 307. See SWINBURNE, TESTAMENTS, pt. 6, s. 13, 2. Second, the probability of continued communication from any one who is not dead. *Cf. Traveler's Ins. Co.* v. *Rosch*, 23 Ohio Cir. Ct. 491. Like any presumption it is rebuttable by explaining away its basic inferences. Thus the fact that the alleged deceased was a fugitive from justice might explain why he conceals his whereabouts. See *Mutual Ben-*

efit, etc. Ins. Co. v. *Martin*, 108 Ky. 11, 18, 55 S. W. 694, 696; *Sensenderfer* v. *Pacific, etc. Ins. Co.*, 19 Fed. 68, 69. And, likewise, as in the principal case, an unusual family longevity might rebut the first basic inference. But the use of the mortality tables does not explain away anything; it is rather a substitution of another presumption in which the period varies with the age of the alleged deceased. This is a more scientific application of the inference of death from old age, but it loses sight of the inference from non-communication. It is submitted that this latter is a constant, equally applicable to young and old, and hence that the actuarial tables should be applied only to shorten the period of seven years. Furthermore, the claim of the petitioners is not based merely on the fact that Thomas survived William, but necessarily also that William is now dead. If these claims are distinctly separate, the court is correct in claiming that the mortality tables can raise two presumptions: that Thomas lived to 1916, and that Thomas is now dead. But if the burden of proof were that Thomas died between 1916 and the present, that is, if this were one claim, then though the tables show that a majority of fifty-two year olds in 1894 will have survived 1916, but not the present, however only a very small minority will have died between those periods.

PROCESS — MANNER AND EFFECT OF SERVICE — PRIVILEGE OF NON-RESIDENT WITNESS FROM SERVICE AS OFFICER OF A CORPORATION. — An officer of a corporation was served with process in a county through which he was traveling, in order to serve as a witness, in obedience to a subpœna. A statute provides that "a witness shall not be liable to be sued in a county in which he does not reside, by being served with a summons in such county, while going, returning or attending, in obedience to a subpœna." OKLAHOMA REV. LAWS, 1910, § 5064. *Held*, that the service did not give jurisdiction of the corporation. *Commonwealth Cotton Oil Co.* v. *Hudson*, 161 Pac. 535 (Okla.).

The statute relates only to the question of venue, and does not mention the rights of a corporation. See *Linn* v. *Hagan's Adm'x*, 121 Ky. 627, 628, 87 S. W. 1101. But by common law witnesses are privileged from service of process. *Hicks* v. *Besuchet*, 7 N. D. 429, 75 N. W. 793; *Letherby* v. *Shaver*, 73 Mich. 500, 41 N. W. 677. See *Lamkin* v. *Starkey*, 7 Hun (N. Y.) 479. See also TIDD, PRACTICE, 195; ALDERSON, JUDICIAL WRIT AND PROCESS, § 120; 23 HARV. L. REV. 474. This applies even where the witness attends the trial voluntarily. *Chittenden* v. *Carter*, 82 Conn. 585, 74 Atl. 884. If this privilege were in the nature of a reward for the witness's services, it might be arguable that it extended only to his personal capacity; but if it is considered a privilege of the court, it ought to cover the witness's official capacity as well. Authority supports this latter view. See *Parker* v. *Marco*, 136 N. Y. 585, 589, 32 N. E. 989. *Cf. Holyoke, etc. Ice Co.* v. *Amsden*, 55 Fed. 593. So, as the purpose of the privilege is to expedite the administration of justice, and as public policy demands that witnesses shall feel free to attend trials without being subject to service of process, it has even been held that service of process upon a witness constitutes contempt of court. *Bridges* v. *Sheldon*, 7 Fed. 17; *In re Healey*, 53 Vt. 694. It follows that the decision in the principal case is sound, and it is supported by the authorities. *Sewanee, etc. Co.* v. *Williams*, 120 Tenn. 339, 107 S. W. 968. *Cf. Mulhearn* v. *Press Publishing Co.*, 53 N. J. L. 150, 20 Atl. 760. But see *Currie Fertilizer Co.* v. *Krish*, 74 S. W. 268, 269 (Ky.).

TRADE SECRETS — LIST OF CUSTOMERS: USE BY FORMER EMPLOYEE. — The plaintiff was engaged in the business of supplying towels and aprons to factories and offices. The defendants were former employees. Plaintiff seeks to restrain them from soliciting for themselves the custom of those whom they had served while in his employ. *Held*, that he is not entitled to an injunction *pendente lite*. *New York Towel Supply Co., Inc.* v. *Lally*, 162 N. Y. Supp. 247 (Sup. Ct., King's Cty.).